IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

NO. ~~RBF. A 1090~~ 82-280

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SUPREME COURT, U.S.

CHARLES H. SYLVAIN, PETITIONER

V.

PRISCILLA S. HENDERSON, EXECUTRIX,
ESTATE OF EUDORE J. SYLVAIN, ~~ET AL~~

MOTION FOR LEAVE TO ADD PARTY AS RESPONDENT

IN PETITION FOR WRIT OF CERTIORARI

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This petitioner hereby moves for leave to add a party as a respondent. This circumstance is very, very peculiar for the added respondent is the Honorable Gary R. Cassavechia, the Probate Judge.

In a petition by the respondent, executrix of the estate where incomplete notice was sent to this petitioner, petitioner files plea of abatement, and special appearance and desires to be heard. Court amends notice with Probate Court Rule

that requires 14 day notice.

Petitioner objects to amended process, that plea of abatement is not a settled matter, therefore petitioner is unable to research petition because time is needed to research maintenance of special appearance, not executrix's petition. Petitioner is not able to maintain special appearance and request a continuance according to New Hampshire case law. Lyford et al V Trustees of Berwick Academy, 83 A2d 302, 97 NH 167, 31 ALR2d 258, for such a request would have constituted a general appearance. Petitioner maintained his special appearance status at Probate hearing. Court denies plea of abatement, petitioner objects and excepts, Court does not have jurisdiction over petitioner, over his person or in any other manner. Court options for petitioner to stay and argue petition with status of special appearance or may leave the Court room. Petitioner responds that he is not prepared to argue for petitioner needs 30 days to prepare to defend against executrix's petition. No remedial discretionary posture by the Court could be attained from all parties so petitioner left the Court room and has never been heard or defended against said petition, Clough V Moore 63 NH 111, though on later hearing on Final Account, was again denied to be heard and defend against said petition. Though with only one party under jurisdiction, Probate Court continued hearing on the merits and even issued an interlocutory decree on hearing and reserved other decisions on petition until Court had jurisdiction of petitioner at later hearing on account. Because of Probate Court's procedure it omitted decisions on federal questions and thus defeated the jurisdiction of the United States Supreme Court, Wolf V State of North Carolina, 364 US 177, rehearing denied 364 US 856.

Because the actions of the Judge in this peculiar setting is the main denial of due process, fifth and Fourteenth amendments to the United States Constitution therefore it seems fitting that this Probate Judge should be a party to this cause. The respondent, the executrix of the estate is the real party in interest, Rackley V Board of Trustees of Orangeburg Regional Hospital, 35 FRD 516. Because this petitioner has never been heard or defended against the executrix's petition, due to the abnormal rulings of this Probate Court though the Court has ruled on said petition it is quite reasonable thereon that the Honorable Gary R. Cassavechia be made a party to the Writ of Certiorari, United Mine Workers of America V Gibbs, 383 US 715, 724, and the real party in interest, the executrix has not had to defend her petition in Court by this petitioner.

Because the New Hampshire Supreme Court has superintendence over all New Hampshire Courts and bocause the approach to that Court is in the form of an appeal which differs in status of a Petition for a Writ of Certiorari.

Respectfully Submitted,

Charles H. Sylvain, Pro se

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